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THE SEMIKAH CONTROVERSY BETWEEN THE ZUGOTH*

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It is a well-known fact that equivocal expressions are frequently misleading even to scholars. The semikah controversy between the Zugoth is an illustration of such an equivocal expression that has given rise to error. This controversy is of great significance, because it is the first one recorded in the Talmud, and because, although it was continued through the administration of all the successive Zugoth, no agreement was reached on the subject.

The word סמיכה has various meanings in the Talmud:

(a) It is used in the sense of proximity as: אין סומכין לשרה תבואה, חרדל וחריע, אבל סומכין לשרה ירקות חרדל וחריע (Kil'oim, II, 9). 'It is not allowed to sow mustard and bastard saffron closely adjoining to a field which was sown with grain, because this is a forbidden junction (כלאים); but it is allowed to sow mustard and bastard saffron closely adjoining to a field which was sown with herbs, for this is not a forbidden junction.'

(b) It is also used in the sense of laying on of hands as: בית שמאי אומרין מביאין שלמים ואין סומכין עליהם וב"ה אומרין מביאים שלמים ועולות וסומכין עליהם (Hagigah II, 3). 'The school of Shammai says, It is allowed to bring peace-offerings on the holidays, but the laying on of the hands must not be

* Zugoth (זוגות), meaning Pairs, is the Talmudic appellation for the two leaders of the Sanhedrin from the days of Jose b. Joezer and Jose b. Joḥanan (about 160 B.C.E.) till the time of Hillel and Shammai.

done on the holidays. The school of Hillel says, It is allowed to bring both peace-offerings and burnt-offerings on the holidays and to lay the hands on them.'

(c) It is used, again, in the sense of relying upon an authority as: נסמך על דברי זקן (Erubin 65 b). 'We may rely upon the authority of the aged man (R. Ḥanina b. Joseph)', or הלכות שבת חגיגות שהן מקרא מועט והלכות מרובות יש להן על מי (according to the Munich MS.) שיסמכו הן הן גופי תורה (Ḥagigah I, 8). 'The laws concerning the Sabbath and the festive sacrifices which are numerous although only a few of them are Biblical, are nevertheless essential parts of the Law because we have them on good authority.' (From this also developed the 'Semikah' which is given to a scholar, thus investing him with authority.)

In all places where a dispute concerning semikah occurs, we can easily see from the context in what sense the word is used. In the case of the semikah controversy between the Zugoth, however, the Mishnah says obscurely לסמך and שלא לסמך without stating explicitly the sense in which the word is used, thus giving rise to misunderstanding. The Mishnah reads as follows: יוסי בן יועזר אומר שלא לסמך יוסי בן יוחנן אומר לסמך. יהושע בן פרחיה אומר שלא לסמך נתאי הארבלי אומר לסמך. יהודה בן טבאי אומר שלא לסמך שמעון בן שטח אומר לסמך. שמעיה אומר לסמך אבטליון אומר שלא לסמך. הלל ומנחם לא נחלקו יצא מנחם נכנס שמאי¹ הלל אומר לסמך שמאי אומר שלא לסמך. (Ḥagigah, II, 2).

All the commentators are of the opinion that the semikah controversy between the Zugoth is identical with the controversy between the schools of Shammai and Hillel

¹ Hillel before Shammai. So is the version in P. Ḥag. II, 2, and B. Shabb. 15 a.

This was indeed noticed by Frankel in his *דרכי המשנה*, pp. 43-4, and by Weiss in *דור דור*, pp. 103-4. They nevertheless did not abandon the traditional interpretation.

A close examination of the Tosefta and Palestinian Talmud will show that the dispute between the Zugoth is not identical with that of the schools of Shammai and Hillel as is generally assumed; that the controversy of the Zugoth centred around an important general principle rather than on the question of the propriety of performing the semikah ceremony in the temple-court on holidays. The Tosefta reads: חמשה. על הסמיכה. ממייהם לא נחלקו אלא על הסמיכה. חמשה. וזוגות הן שלשה מזוגות הראשונים שאמרו שלא לסמוך היו נשיאים ושנים אבות בית דין. שנים מזוגות האחרונים שאמרו לסמוך היו נשיאים ושנים אבות בית דין אמר ר' יוסי מתחילה לא היו מחלוקות בישראל אלא בבית דין של עשרים ושלשה וכ'. . . . איזו היא הסמיכה שנחלקו

ב"ש אומרים מביאין שלמים ואין סומכין עליהם אבל לא עולות וב"ה²
אומרים מביאין שלמים ועולות וסומכין עליהם (Hag. II, 3; Bes. II, 4)

עליה ב"ש וב"ה.³ ב"ש אומרים אין סומכין ביו"ט שלמים שחגג בהן סומך עליהן מערב יו"ט וב"ה אומרים מביאין שלמים ועולות וסומכין עליהן (Tosef. Hagigah, II, 8-10). 'Never was there a controversy in Israel except the one concerning semikah. There were five Zugoth. Three of the earlier Zugoth who were of the opinion שלא לסמוך were presidents (of the Sanhedrin) and their opponents were vice-presidents; two of the latter Zugoth who held the view לסמוך were presidents and their opponents were vice-presidents Said R. Jose, Formerly no controversy occurred in Israel except in a court (בית דין) of twenty-three members Over which semikah were the schools of Shammai and Hillel divided? The school of Shammai said that the laying on of hands on the festive sacrifices must not be done on a holiday; the semikah ceremony should be performed a day before the holiday. The school of Hillel said, It is allowed on a holiday to bring peace and burnt-offerings and lay the hands upon them.'

The fact that the Tosefta asks 'over which semikah were the schools of Shammai and Hillel divided' and not over which semikah were the Zugoth divided,⁴ clearly shows that the two controversies were not considered identical. The P. Talmud reads: בראשונה לא היתה מחלוקת: משרבו בישראל אלא על הסמיכה בלבד ועמדו שמאי והלל ועשו אותן ד'. משרבו

³ See הגהות הנ"א on the Tosef.

מעשה בהלל הזקן שהביא את עולתו לעזרה וסמך עליה ביו"ט חברו⁴ עליו תלמידי ב"ש. . . . לאחר ימים נברה ידן של ב"ש ובקשו לקבע הלכה בדבריהם והיה שם בבא בן בוטא מתלמידי ב"ש ויודע שהלכה כב"ה (J. Hag. II, 78a; B. Beṣ. 20a). There is no evidence in this passage, as some think, that the controversy of the Zugoth is identical with that of the schools of Shammai and Hillel. The Talmud says here 'ויודע שהלכה' (כוונות שאמרו לסמוך) כהלל; but not 'שהלכה כהלל' which would have been more proper if the two controversies were considered identical.

תלמידי ב"ש וב"ה ולא שמשו את רביהן כל צרכן רבו המחלוקות בישראל (P. Talm. Ḥagigah II, 2).

It is evident from this passage that according to the P. Talmud the semikah was the only subject of contention that was debated during the administration of all the Zugoth (as a matter of fact we do find other controversies between the Zugoth, as for instance the controversy between Judah b. Tabḥai and Simon b. Shataḥ⁵ and the one between Joshua b. Peraḥah and the Ḥakamim⁶).

The commentators have erred in considering the words לסמוך and שלא לסמוך, that are used in the case of the Zugoth, identical with the words סומכין and אין סומכין that are used in the case of the controversy between the schools of Shammai and Hillel.⁷ The words לסמוך and שלא לסמוך do not denote here to lay on the hands on an object, but express the derivative meaning of the verb, as in the phrase נסמוך על מיסמך ממיכא דעתיהו (Ḥag. 20 b), (Erub. 65 b), רברי זקן (ibid., Mishnah I, 8), i.e. to depend, to rely, to accept the authority of,⁸ and the question discussed by the Zugoth was whether we could depend upon the authority of the Ḥakamim.

It is very probable that this Mishnah, which is the second of the second chapter of Ḥagigah, is closely related to the last Mishnah of the first chapter which contains the statement that the laws concerning the Sabbath and festive sacrifices, &c., which are numerous although few of them

⁵ Hag. 16 b; Mak. 5 b; Tosef. Sanhed. V, VI.

⁶ Tosef. Makṣirin, III, 4.

⁷ See Frankel, דרכי המשנה, ff. 43-4; Weiss, דור, V, I, ff. 103-4.

⁸ A. Sidon, 'Die Controverse der Synhedralhäupter' in *Gedenkbuch für Erinnerung an David Kaufmann*, ff. 355-64. He was the first to interpret the semikah of this Mishnah in the sense of relying upon authority and not in the sense of 'laying on of hands'.

are Biblical, are nevertheless essential parts of the Law because we have them on good authority. This Mishnah developing the subject further, informs us that the question as to whether or not we ought to rely upon the Ḥakamim in their innovations has not always been generally accepted ; but it was rather the subject of contention during the administration of all the Zugoth.

Three of the earlier and two of the latter Zugoth say : לשל לא למור, i. e. we ought not to rely on the Ḥakamim in their innovations upon the Torah. Their colleagues say : למור, i. e. we rely entirely upon the Ḥakamim even in their innovations upon the Torah.

An examination of the few halakic statements of the Zugoth which have been transmitted to us corroborates this interpretation of the controversy of the Zugoth.

We shall also be able to understand their obscure halakoth which were transmitted to us.

The first pair which was divided over the semikah question was Jose b. Joezer and Jose b. Joḥanan. יוסי בן יעזר. אומר של לא למור יוסי בן יוחנן אומר למור. Now, no halakah is recorded of Jose b. Joḥanan, excepting the decree which he issued together with Jose b. Joezer declaring Gentile territory and glass vessels as levitically unclean.⁹ It is undoubtedly to be assumed that his halakic opinions are included in the anonymous ancient halakoth of the Talmud. Of Jose b. Joezer, however, we have three halakot as testimonies (עדייות) from which the inference may be drawn that by these testimonies he set himself in opposition to the ordinances of the Ḥakamim : העיד יוסי בן יעזר על איל קמצא דכן ועל משקה בית מטבחה דכן ודקרב במיתא מסאב וקרי ליה יוסי שריא (Ed. VIII, 4).

⁹ Shabb. 14 b.

The content of this Mishnah is puzzling indeed. For, what is the purpose of his testimony? Is it not explicitly stated in the Torah: 'He that toucheth the dead body of any human person shall be unclean seven days' (Num. 19. 11)? The Talmud in fact wonders at this Mishnah: 'and they called him "Jose the permitter" (יוסי שריא), they ought to have called him "Jose the forbiddor" (יוסי אסרא)!' (מבעי ליה) (Ab. Zar. 37 b). Should we assume, however, that by שלא לסמוך Jose b. Joezer meant that we ought not to rely upon the authority of the Ḥakamim in their innovations upon the Torah, the purpose of his testimonies will become clear to us. For with these testimonies Jose b. Joezer opposed the tradition of the Ḥakamim who decree what was not to be found in the Torah. This was in accordance with his own view that 'we ought not to depend upon' the decrees and traditions of the Ḥakamim (שלא לסמוך).

The meaning of these testimonies thus becomes clear:

I. איל קמצה דכן (the locust) il kāmṣa is clean and may be eaten. For, Biblically, those locusts are clean 'that go upon all fours, which have jointed legs above their feet', (Lev. 11. 21). But the Ḥakamim said that the marks of cleanness in locusts are: four legs, four wings, hindlegs for leaping and the wings covering the greatest part of the body, ארבע רגלים, ארבע כנפים וקרצולים וכנפיו חופין את רובו (Hul. 59 a; *ibid.*, 65 a). In this matter, therefore, he opposed the decree of the Ḥakamim requiring those additional marks of cleanness, and maintained that the locust il kāmṣa which had only the marks pointed out in the Torah, was clean¹⁰ and might be eaten.

¹⁰ Ab. Zar. 37 a, b.

II. משקה בית מטבחיא דכן The liquid of the slaughtering-place is clean. Biblically, 'All drink in every such vessel that may be drunk shall be unclean' ככל ישתה אשר יטמא (Lev. 11. 34). Thus only water is susceptible to levitical uncleanness. The Ḥakamim, however, decreed that blood and five other kinds of liquids are also susceptible of levitical uncleanness¹¹ (Sifra Shemini, VIII; Pes. 17 a). To oppose this decree Jose b. Joezer testified that משקה בית מטבחיא, i.e. blood, is דכן, clean. For blood and the other liquids are not implied in the verse ישתה אשר יטמא and therefore are not susceptible to uncleanness.¹²

III. ודיקרב במיתא מטבא One that touches a corpse becomes unclean. According to the Torah: 'He that toucheth the dead, even any man's dead body, shall be unclean seven days' ימים (Num. 19. 11). The Ḥakamim decreed חרב הרי הוא כחלל¹³ that the sword with which a person was killed had the same levitical status as the slain body, i.e. one who touches such a sword becomes unclean for seven days. Against this Jose b. Joezer testified that only דיקרב במיתא the one who touches the corpse becomes unclean, but not the one who touched a sword with which a person was slain.

It is because of these three testimonies that he was called 'Jose the permitter' יוסי שריא, as in all of these he

אין לי מים מנין הטל והיין והשמן והדם והדבש והחלב ת"ל וכל¹¹ משקה (Sifra Šmini, IX).

¹² The Talmud (Pes. 17 a) has two different versions of this statement: רב תני משקי בית מטבחיא ולוי תני משקי בית מדבחיא. According to our interpretation, however, it makes no difference. For by מטבחיא בית משקי is meant water and blood, and by מדבחיא בית משקי wine and oil.

¹³ Pes. 14 b: חרב הרי הוא כחלל. See Katzenelenson, *Sadducees and Pharisees*, Voschod; S. Zeitlin, 'Les dix-huit Mesures', *RÉJ.*, LXIII, 1914.

opposed the decrees of the Ḥakamim. This explains also the statement of the Mishnah לקדש מטהחתו היתה מדרם ¹⁴ that his towel was considered unclean of the first degree (מדרם) for those who observed the levitical laws prescribed for the handling of the sacred food. Obviously they declared it unclean because he did not subscribe to the decrees of the Ḥakamim in matters pertaining to the laws of levitical uncleanness.

This throws light upon an obscure narrative which R. Judah tells in the name of Jose b. Joezer: אמר ר' יהודה קורות נעץ (יוסי בן יועזר) להם ואמר עד כאן רשות הרבים עד יהודה קורות נעץ (Ab. Zar. 37 b).

R. Judah who was engaged in the study of antiquity, and all of whose statements were undoubtedly based on tradition, tells us that Jose b. Joezer had erected beams and demonstrated: here the limits of the public road (רשות הרבים) end; here the limits of the private ground (רשות היחיד) end. It is rather strange that Jose b. Joezer, the president of the Sanhedrin, should personally go out in the streets of the city to erect beams for the purpose of fixing and demonstrating the limits of the private and public ground. This narrative, however, contains another instance of the application of Jose b. Joezer's principle not to accept the authority of the Ḥakamim in their innovations upon the Torah. For the law formerly recognized two classes of territory with regard to the Sabbath laws: public territory (רשות הרבים) where carrying on the Sabbath day was forbidden (as we find in Nehemiah's order to lock the gates of the city before the Sabbath, so that 'there should be brought in no burden on the Sabbath day', Neh. 13. 19); and private territory where carrying on the Sabbath was

¹⁴ Hag. 18b.

allowed (Shab. 96 b). The Ḥakamim, however, added another class, namely, the Karmelith (כרמלית), i. e. private territory used by the public, and forbade the carrying of objects from it to the two other classes of territory and vice versa. The Talmud, indeed, regarded the Karmelith as a mere Rabbinical restriction (גזירה) (Shabbat 11 b). Rejecting this new enactment of the Ḥakamim, Jose b. Joezer said: Here the limits of the public ground end; here the limits of the private ground end. I recognize two classes of territory with regard to the Sabbath laws and no more.

Now, if we assume that the controversy between the Zugoth was regarding the validity of the innovations of the Ḥakamim, we shall be able to understand the only halakah which has been transmitted to us from the second pair.

The second pair was Joshua b. Peraḥah and Nittai the Arbelite. יהושע בן פרחיה אומר' שלא לסמוך נתאי הארבלי אומר' לסמוך. No halakah is accredited to Nittai the Arbelite; but undoubtedly, as indicated above, his halakic opinions were included among the anonymous ancient halakoth.

Of Joshua b. Peraḥah we have the following halakah: יהושע בן פרחיה אומר חטים הבאים מאלכסנדריא טמאות מפני אנטליא שלהן. אמרו חכמים אם כן יהיו טמאות ליהושע בן פרחיה ומהורות לכל (Tosef. Makshirin, III, 4).

The argument of the Ḥakamim 'let the wheat be unclean for Joshua b. Peraḥah but clean for all Israel', is strange indeed. If it is considered clean for all Israel, why should it be unclean for Joshua b. Peraḥah? But it becomes clear when we realize that in this halakah Joshua b. Peraḥah opposed the decree and tradition of the Ḥakamim. Biblically, 'וכי יתן מים על' (if any water be put upon the seed) it becomes susceptible to levitical uncleanness (מבשר) זרע (לקבל טומאה), and no distinction is made between seed which

is fixed to the ground (מחובר לקרקע) and that which is plucked (תלוש), for this is the implication of the phrase על זרע. This, then, is the contention of Joshua b. Peraḥah: 'Wheat that is brought from Alexandria is unclean שלהן מפני אנטליא.' מפני אנטליא (= ἀντλίον) is the water-wheel with which the Egyptians irrigated their fields from the Nile. Thus, water was poured on the seed and it became susceptible to levitical uncleanness. Whereupon the Ḥakamim answered: if so 'let the wheat be unclean for Joshua b. Peraḥah' who disregards the tradition of the Ḥakamim, 'but clean to all Israel' who accept the ordinance of the Ḥakamim: that seed becomes susceptible to levitical uncleanness when water has been poured over it only when it was already detached from the earth (תלוש), but not while still fixed to the ground (מחובר).¹⁵

The third pair was Judah b. Tabbai and Simon b. Shataḥ. יהודה בן טבאי אומר שלא לסמוך שמעון בן שטח אומר לסמוך. Of Simon b. Shataḥ several laws and decrees have been transmitted. A narrative of Judah b. Tabbai has come down to us reflecting his attitude toward tradition: אמר יהודה בן טבאי אראה בנחמה אם לא הרגתי עד זומם להוציא מלבן של צדוקים שהיו אומרים אין עדים זוממים נהרגין עד שיחרג הנידון. אמר לו שמעון בן שטח אראה בנחמה אם לא שפכת דם נקי שהרי אמרו חכמים אין עדים זוממים נהרגין עד שיוזמו שניהם.¹⁶

Judah b. Tabbai, who did not accept the decrees of the Ḥakamim in their innovations upon the Torah, executed one עד זומם. For according to the Bible, 'if a witness of violence rise up against any man to testify against him for any wrong and the judges shall inquire diligently; and behold, if the witness be a false witness, he hath testified

¹⁵ Sifra T. K. Šmini 11; Tosef. Maksirin, I.

¹⁶ Ḥag. 16 b; Mak. 5 b; Tosef. Sanhed. VI.

a falsehood against his brother : then shall ye do unto him as he hath purposed to do unto his brother', כי יקום עד שקר, &c. באיש . . . והנה עד שקר העד שקר ענה באחיו ועשייתם לו כאשר זמם (Deut. 19. 16-19). This implies that even if one witness was proved זומם, he is to be executed. Simon b. Shataḥ, on the other hand, who accepted the innovations of the Ḥakamim upon the Torah, reproached Judah b. Tabḥai for having shed innocent blood (שפכת דם נקי), for the Ḥakamim said: עדים זוממים do not incur the penalty unless both were found זוממים. מה עדים. 'ע"פ שנים עדים יומת המת' זוממים. (Tosef. Sanhed. VI, 6).

The fourth pair was Shemaiah and Abtalyon : שמעיה ואבטליון. Of this pair, several halakoth were transmitted by others in their name;¹⁷ but no halakoth have come down from them directly from which their attitude toward tradition might be inferred. In the testimonies that others made in their name they always concur.¹⁸

¹⁷ Yebam. 67 a ; Edu. I, 3.

¹⁸ There is a passage in the Talmud attributed to Shammai the elder : האומר לשלוחו צא הרג את הנפש הוא חייב ושולחיו פטור. שמאי הזקן אומר משום חגי הנביא שולחיו חייב שנאמר אותו הרגת בחרב בני עמון (Kid. 43 b). 'If any one said to his agent : go slay a person, the agent is liable for the crime but the instigator is not responsible. Shammai the elder said in the name of Ḥaggai the prophet : the instigator is liable for the crime, for it is written : "Him hast thou slain with the sword of the children of Ammon" (2 Sam. 12. 9). (Nathan the prophet charged David with the crime of killing Urijah, although David only gave the order to expose him in the battle front.)' To my mind the attribution of this statement to Shammai is open to question. For from the Talmudic discussion (*ibid.*, 42 b) it appears that the school of Shammai held that the instigator is free from penalty (שולחיו פטור) : (שולחיו פטור) על כל דבר פשע ב"ש אומרים שחייב על המחשבה : כמעשה וב"ה אומרים אינו חייב עד שישלח בו יד שנאמר אם לא שלח ידו. אמרו ב"ש לב"ה והלא נאמר על כל דבר פשע אמרו להם ב"ה לב"ש והלא נאמר אם לא שלח ידו בו' אמרו ב"ש לב"ה אם כן על כל

The fifth and last pair was Hillel and Shammai. Aside from the semikah controversy of all the Zugoth we find

דבר פשע למה לי? שיכול אין לי אלא הוא אמר לעבדו ולשלוחו מניין
 שולחין פטור. ת"ל על כל דבר פשע. It is thus evident from this passage that the school
 of Shammai held that the instigator is liable (שולחין חייב), deriving his opinion from
 the verse אותו הרגת, the school of Shammai would have replied to the
 school of Hillel that the opinion that the instigator is liable one may derive
 from the verse אותו הרגת and thus revert to their argument על כל דבר פשע
 למה לי? This proves the fact that the school of Shammai did not know
 that שולחין חייב is derived from the verse אותו הרגת. But would this be
 possible if Shammai was the author of the statement? As a matter of fact
 it is very doubtful if Shammai ever used the method of deriving halakic
 opinions from Biblical intimations (דרש פסוקים). The law derived from the
 verse ער דרתה which the Talmud attributes to Shammai, וכן היה שמאי
 (Shabb. 19 a) is quoted in the Tosef. (MS.) in the name of Hillel : הלל הוקן דורש אפילו בשבת
 (Erub. III, 7). The Sifre brings this statement in the name of Shammai, and continues :
 זו אחר מג' דברים שדרש שמאי הוקן (Sifre Šoftim 203). We do not find, however,
 in the entire Talmud the other two cases. Should we accept the version of
 the Tosefta, the statement of the Sifre could be referred to Hillel rather
 than to Shammai. For we do find Hillel deriving laws from Biblical
 intimations in two other instances : (1) הלל אומר (Sifra Šmini) ; (2) הלל אומר ולא
 שניתק נתק בתוך נתק (Sifra Tazria 9). We also find elsewhere that Hillel
 went up from Babylon because of three things עלה הלל (J. Talmud Pesah, VI, 33 a). It is highly probable, therefore, that in
 the case of the law derived from the verse אותו הרגת we should read
 שמעיה instead of שמאי. This agrees with the narrative of Josephus
 (Antiq., XIV, 9, 4), that Sameas, reprimanding his colleagues for suppressing
 their opinion in the case of Herod, said that Herod deserved capital punish-
 ment for instigating his men to kill Hezekiah and his followers. For
 according to his own view : 'האומר לשלוחו צא הרג את הנפש שולחין חייב'.
 The narrative of Josephus is identical with the Talmudic narrative : עבדיה
 דינאי מלכא קטל נפשא אמר להם שמעון בן שטח לחכמים תנ' עיניכם
 ונרפא הנתק. הלל אומר ולא (Sanhed. 19 a). Here, surely, we ought to read שמעיה
 instead of דינאי מלכא ; שמעון בן שטח here = הרדוס. See Derenbourg, *Histoire de la
 Palestine depuis Cyrus jusqu'à Adrien*, Paris, pp. 146-8 ; Graetz, *Geschichte
 der Juden*, vol. 3 II, note 16.

several other disputations between Shammai and Hillel. According to the Palestinian Talmud, Shammai and Hillel were divided upon four issues;¹⁹ according to the Babylonian Talmud they disagreed upon three issues.²⁰ It is highly probable that the two versions are not contradictory. The Babylonian Talmud may have omitted the semikah controversy, considering it as included in the controversy of the Zugoth. The first Mishnah of Eduyoth records three controversies between Shammai and Hillel: שמאי אומר כל הנשים דיין שעתן. והלל אומ' מפקידה לפקידה. שמאי אומר מקב לחלה והלל אומר מקביים, הלל אומר מלא הין מים שאובין פוסלים את המקוה שחייב אדם לומר בלשון רבו²¹ שמאי אומר ט' קבים.

בראשונה לא היתה מחלוקת בישראל אלא על הסמיכה בלבד ועמדו¹⁹ שמאי והלל ועשו אותן ד' (J. Hag. II, 2).

אמר רב הונא בנ' מקומות נחלקו שמאי והלל (Shabb. 15 a).

²¹ After the Munich manuscript. In our printed editions the reading is אלא, however, has no meaning here. The traditional interpretation of the Mishnah is that Hillel said הין מלא instead of הין in order to quote the exact expression of his teachers Shemaiah and Abtalyon, who being descendants of proselytes (בני גרים) pronounced הין like אין, and for this reason they said מלא הין to distinguish it from אין. (See Maimonides' Com. to this Mishnah; also J. Brüll, מבוא המשנה, note 14). The legend that Shemaiah and Abtalyon were descendants of Gentiles (Gittin 57 b), misled the Talmudic commentators and scholars in the interpretation of another Mishnah (see Yoma 71 b וכי גרול וכו' מעשה בכהן גדול וכו'). The expression 'ייתן בני עממין' does not necessarily mean sons of Gentiles. It may refer to the people over against the priest): עקביה בן מהללאל העיר: ד' דברים הוא היה אומר אין משקין לא את הגיורת ולא שפחה משוחררת. וחכמים אומרים משקין. אמרו לו מעשה בכרכמית שפחה משוחררת שהיתה בירושלים והשקוה שמעיה ואבטליון. אמר להם דוגמא (Eduyoth, V, 6). All the Talmudic commentators and scholars (see Weiss, דור דור, ver. 1, p. 176; I. Levi, *Wörterbuch*, on the word דוגמא; also *Arukh*) are of the opinion that Akabya was excommunicated because he showed disrespect to Shemaiah and Abtalyon by saying דוגמא השקוה, which they interpreted to mean: they showed favoritism to their own class in giving the 'testing water' to one who was a proselyte like

Another controversy between Shammai and Hillel is found in Shabb. 15 a: **הבוצר לגת שמאי אומר הוכשר לקבל** : **טומאה והלל אומר לא הוכשר**.

In these four controversies four principles are involved with which Hillel proposed to start a new development in the Oral Law: (1) **סיני לתורה**, i.e. where an apprehension exists lest a Biblical law may be transgressed we ought to take a preventive measure. (2) Leniency in law (**צד קולא**). (3) Semikah. (4) Subjectivity, i.e. we ought to reckon with the intention of the person. In these four principles Shammai was his opponent.

These were the issues between them:

(1) **שמאי אומר כל הנשים דיין שעתן והלל אומר מפקידה לפקידה**. Thus, according to Shammai, the sacred food which a woman handled a moment before her menstruation is levitically clean; but according to Hillel all the sacred food which she handled since her last **בריקה** is unclean. Here a very rigorous law as **נדה** is involved, and since it may be feared that she might err, we ought to take the preventive measure of declaring all the sacred food that she handled since her last **בריקה** levitically unclean. But Shammai maintained that

themselves. This interpretation, however, is erroneous. The version in the P. Talmud is **דוכמה** instead of **דונמא** (P. Talm. Moed katan, III, 8r d), and the explanation there given of the word **דוכמה** is that it is equivalent to **דכוותה**. The interpretation of our Mishnah thus becomes apparent. Akabya b. Mehalalel said **דוכמה השקדוהו**, i.e. Shemaiah and Abtalyon gave the 'testing waters' not to an emancipated handmaid (**משוחררת**), but to one who is like unto her (**דכוותה**), namely, a Hebrew handmaid (**אמה עבריה**). Akabya thus contradicted the Ḥakamim who cited the case of Karkemith to corroborate their opinion and denied the fact that she was a proselyte. Akabya was not excommunicated for this halakah alone, but for all the four halakoth in which he stubbornly resisted the opinion of the Ḥakamim. R. Eliezer b. Hyrcans was excommunicated for a similar attitude toward the opinion of the Ḥakamim.

we do not entertain such fears and there is no need of any preventive measure. Let the strict law prevail. It is incumbent upon the woman to guard herself. A similar issue was disputed between the schools of Shammai and Hillel: העוף עולה עם הגבינה על השלחן ואינו נאכל דברי ב"ש וב"ה: Hillel: העוף עולה עם הגבינה על השלחן ואינו נאכל דברי ב"ש וב"ה: (Edu. V, 2 ; Hul. 104 b).

The school of Hillel contended that fowl should not be allowed to be placed on the same table with cheese, because if the fowl and the cheese would lie on the same table, one might forget and eat them together. Therefore it is necessary to take the preventive measure and forbid to place them on the same table. The school of Shammai, on the other hand, permitted it because no preventive measures were necessary. For a human being ought to know what is permitted and what is forbidden.

(2) שמאי אומר מקב לחלה וחלל אומר מקביים. Hillel adopting the principle of leniency maintained that dough of less than two *Kabbim* is not to be considered technically an עיסה subject to the law of חלה. Shammai, on the other hand, maintained that dough of one *Kab* also constitutes technically the עיסה which is subject to the law of חלה. For the strict law must prevail.

(3) The following controversy involves the question of semikah: הלל אומר מלא הין מים שאובין פוסלים את המקוה שחייב²² אדם לומר בלשון רבו. שמאי אומר ט' קבין According to Hillel a Hin of 'drawn water' (מים שאובין) is sufficient to make the pond unfit for ritual immersion, שחייב אדם לומר בלשון רבו, because one must use his teacher's words, i. e. one 'must depend upon' the teaching and tradition of his master.²³

²² See the previous note.

²³ The word לִשׁוֹן is used in the Talmud in the sense as: 'אין לנו בעירובין אלא בלשון משנתנו' Erub. 66 b).

Shammai opposing this tradition of Hillel maintained that nine *Kabbim* of 'drawn water' made the pond unfit. For since such an amount of water can be used for the purification of a בעל קרי or for a sick person,²⁴ it is sufficient to make the מקוה unfit.²⁵

(4) Intention: whether we ought to reckon with the intention of a person. הנוצר לגת שמאי אומר הוכשר לקבל טומאה.

²⁴ Berak. 22 a ; Mikv. III, 4.

²⁵ The Ḥakamim accepted neither the opinion of Hillel nor that of Shammai until they heard a testimony in the name of Shemaiah and Abtalyon: וחכמים אומרים לא כדברי זה ולא כדברי זה עד שבאו שני גרדיים משער האשפה שבירושלים והעירו משום שמעיה ואבטליון שג' (Eduy. I, 3). It would appear that a tradition of Shemaiah and Abtalyon had so much weight with them that they relied upon it even though it was transmitted by two weavers. Similarly, when the Bne Bthera, in their perplexity as to whether the Passover offering suspended the Sabbath laws (Pes. 66 a ; J. VI, 1), heard that there was a Babylonian present who had served Shemaiah and Abtalyon, they immediately sent for him. The decision of Hillel the Babylonian that the Passover offering suspended the Sabbath laws, arrived at by means of the ק"ץ, גז"ש, and היקש, was, however, entirely disregarded until he said: 'so I heard from the mouth of Shemaiah and Abtalyon'. It is probable that Hillel proposed to introduce an innovation in the Oral Law, that in a case where there was no precedent, every Beth Din should have the right to decide by means of three hermeneutic rules: the inference from minor and major (קל וחומר), analogy of expression (גזירה שוה) and comparison (היקש). Unwilling to agree to this innovation, the Bne Bthera did not accept his decision until he quoted Shemaiah and Abtalyon. The reason why the Bne Bthera were perplexed in this case, was, perhaps, because they had no tradition on the matter. The difficulty of the P. Talmud: והלא אי אפשר לשני שביעית ש[לא] יחול: (J. Pes. VI, 1, 33 a). 'Since it is impossible that the fourteenth of Nisan should not fall at least once in fourteen years on a Sabbath day, why, then, did they forget the law?' (see Slonimsky, העיבור, Warsaw) may thus also be explained. The administration of the Bne Bthera followed upon the administration of the Zugoth who were divided over the semikah question. The Bne Bthera, therefore, either had no tradition on the matter or did not 'depend upon' tradition.

הלל אומר לא הכשר. Grapes which were gathered from the field for the wine-press are susceptible to levitical uncleanness, according to Shammai, by the juice that runs out of the grapes. For such a case also is implied in ובי יתן מים על זרע. According to Hillel they do not thus become susceptible. For the juice came out upon the grapes without the owner's intention ; neither does he need this juice. Now Hillel's reply to Shammai is clear : אמר לו הלל לשמאי : מפני מה בוצרין במהרה ואין מוסקין במהרה. אמר לו שמאי להלל אם תקניטני גזרני טומאה אף על המסקיה (Shabb. 17 a).

Hillel said thus to Shammai : thou sayest that grapes must be gathered in clean vessels because their juice make them susceptible to uncleanness, though this juice is not needed ; yet thou sayest that olives need not be gathered in clean vessels because no one desires the liquid that runs out of the olives²⁶ and it is therefore not implied in כי יתן. Said Shammai to Hillel : אם תקניטני, i.e. if thou wilt bring the principle of intention to prevail, I shall decree that olives are also made susceptible to levitical uncleanness by their own liquid though no one desires this superfluity. Like the others it would appear that this view of Hillel was not adopted at that time, for the same dispute was continued by the schools of Shammai and Hillel : המניה כלים תחת הצנור לקבל מי גשמים . . . פוסלין את המקוה. אחד המניה ואחד המניה בשוכה ב"ש וב"ה מטהרין בשוכה²⁷. The school of Hillel, following the principle of its founder that we must reckon with a person's intention, maintained that the rain-water made the מקוה unfit only when the vessels were placed there intentionally. Otherwise, if the vessels were left under the pipe through forgetfulness and were not intended

²⁶ Tosef. Toharoth, X, 2.

²⁷ Mikv. IV, 1 ; Shabb. 16 b

to receive the rain-water the latter does not render the מקוה unfit. The school of Shammai not accepting the principle of intention, declared that in either case the מקוה became unfit.²⁸

These are the four controversies between Shammai and Hillel. They mark the beginning of the development of the controversies between the schools of Shammai and Hillel.

²⁸ See Katzenelenson, *Sadducees and Pharisees*, Voschod; S. Zeitlin, 'Les dix-huit Mesures', *RÉJ.*, LXIII, 1914.